

A **Neo Aik Leong v Timbalan Menteri
Dalam Negeri & Anor**

HIGH COURT (JOHOR BAHRU) — CRIMINAL APPLICATION NO 44-11
OF 2001

AZHAR J

B 7 AUGUST 2002

Preventive detention — Detention order — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Omission of phrase ‘atau sedang ada’ in the ground of detention — Whether such omission rendered the detention order fatally defective — Whether such omission prejudiced the applicant in any way — Dangerous Drugs (Special Preventive Measures) Act 1985

C

The applicant was detained by an order of the Deputy Minister of Home Affairs (‘the minister’) under the Dangerous Drugs (Special Preventive Measures) Act 1985. In this application, he complained about the omission of the phrase ‘atau sedang ada’ in the ground of detention annexed to the minister’s order. It was submitted on behalf of the applicant that the omission was of material significance and resulted in the minister’s order becoming fatally defective.

D

Held, dismissing the application:

E

It was extremely clear that the detention of the applicant was made by reason of his previous drug trafficking activity and not current. The narrowing down of the reasons from two to one by omitting the phrase ‘atau sedang ada’ made it easier for the applicant to prepare his case for the purpose of representation. The omission of the phrase ‘atau sedang ada’ had not in any way prejudiced the applicant in preparing his case. Over indulgence in trivial technicality would lead to absurdity (see p 448F–G); *Abd Rahman bin Haji Maidin v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2000] 3 MLJ 108 followed.

F

G

[Bahasa Malaysia summary]

Pemohon telah ditahan melalui satu perintah Timbalan Menteri Dalam Negeri (‘menteri tersebut’) di bawah Akta Dadah (Langkah-Langkah Pencegahan Khas) 1985. Dalam permohonan tersebut, beliau telah mengadu tentang peninggalan frasa ‘atau sedang ada’ dalam alasan penahanan yang dilampirkan bersama perintah menteri tersebut. Ia telah diujahkan bagi pihak pemohon bahawa peninggalan tersebut adalah amat penting dan menyebabkan perintah menteri tersebut menjadi defektif.

H

Diputuskan, menolak permohonan tersebut:

I

Adalah amat jelas bahawa penahanan pemohon telah dibuat oleh sebab kegiatan pengedaran dadah beliau sebelum ini dan bukan sekarang. Dengan membataskan sebab-sebab daripada dua kepada

satu dengan meninggalkan frasa ‘atau sedang ada’ telah memudahkan pemohon untuk menyediakan kes beliau bagi tujuan representasi. Peninggalan frasa ‘atau sedang ada’ tidak dalam apa cara memprejudiskan pemohon dalam penyediaan kes beliau tetapi adalah sebaliknya. Adalah tidak munasabah jika diturutkan sangat perkara-perkara yang teknikal sebegini (lihat ms 448F–G); *Abd Rahman bin Haji Maidin v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2000] 3 MLJ 108 diikuti.]

Notes

For cases on Detention under Dangerous Drugs (Special Preventive Measures) Act 1985, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1231–1232.

Cases referred to

Abd Rahman bin Haji Maidin v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2000] 3 MLJ 108 (folld)

Bhawani Shankar v Asstt Collector, Customs (Preventive) (1981) Cri LJ 505 (refd)

Ex parte Johannes Choeldi & Ors [1960] MLJ 184 (refd)

Greene v Secretary of State for Home Affairs [1942] AC 284 (refd)

Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam and another application [1993] 3 MLJ 673 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(1), 9(2)(b)

Emergency (Public Order and Prevention of Crime) Ordinance No 5 1969

Gobind Singh Deo (Karpal Singh & Co) for the applicant.

Abdul Rani Megat Kasim (Senior Federal Counsel, Ministry of Home Affairs) for the respondents.

Azhar J: The focus of this application is on s 9(2)(b) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (‘the Act’) which requires the minister to furnish the detainee with a statement in writing:

- (i) of the grounds on which the order is made;
- (ii) of the allegations of fact on which the order is based; and
- (iii) ...

The applicant’s complaint in this case is about the omission of the phrase ‘atau sedang ada’ from the ground for the detention that was annexed to the deputy minister’s detention order dated 23 January 2001. It is submitted for the applicant that by this omission the deputy minister has failed to strictly comply with the requirement of the order itself which specifically stated that

- A 'saya adalah berpuashati bahawa orang yang namanya tersebut di bawah pernah ada atau sedang ada kaitan dengan aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya'. Relying on authorities such as *Ex parte Johannes Choeldi & Ors* [1960] MLJ 184 and *Greene v Secretary of State for Home Affairs* [1942] AC 284 (HL), it is submitted that although the omission is a technical matter, its significance
- B is material as it concerned liberty of a subject.

It is submitted further that failure to comply with the requirement of the law, ie s 9(2)(b) of the Act rigidly and meticulously would result in the order becoming fatally defective. To fortify this proposition, the court's attention is drawn to several local cases one of which is a Supreme Court case of

C *Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam and another application* [1993] 3 MLJ 673, where a detention order under the Emergency (Public Order and Prevention of Crime) Ordinance No 5 1969 was set aside on the ground that the order by the deputy minister was vague in that it could not be ascertained as to whether the said deputy minister had actually applied his mind to the particular circumstances of the case or

D whether he had exercised his power of detention mechanically.

It is also the Supreme Court's view in that case that the determination of the question as to whether the Deputy Minister addressed his mind to the relevant limb or to both the limbs, in making his detention order is a procedural matter and if it is shown that there is some doubt as to which

E particular limb the Deputy Minister applied his mind to, or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detainee.

Further, this court's attention is also drawn to a passage in an Indian case *Bhawani Shankar v Asstt Collector, Customs (Preventive)* (1981) Cri LJ

F 505 which reads:

It is not possible for a detainee to make a proper representation if the grounds which are served on him are not germane or are not fully consistent with the reason for which he is sought to be detained.

- G The denial of such right is certainly fatal to the detention order.

By way of analogy, it is submitted further that in the instant case, the grounds served on the applicant are not fully consistent with the reasons for which he is sought to be detained as set out in the order.

- H In reply to the above submission, the senior federal counsel for the respondent drew the court's attention to the decision of the Court of Appeal in the case of *Abd Rahman bin Haji Maidin v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2000] 3 MLJ 108 where similar issue arose for consideration. It was held, inter alia, that s 6(1) of the Act encompasses two categories of persons, ie those previously associated with activity relating to or involving the trafficking of dangerous drugs and those currently associated with the same. The effect of the use of the word 'or' between the words 'relating to' and 'involving' in the subsection is to give a wider and all encompassing meaning to the detainee's criminal activity.
- I

It is further submitted that if at all there is any defect in the order, it is only in form rather than substance that does not affect the validity of the same.

A

It is also submitted that the reasons for the applicant's detention has been clearly set out in the grounds accompanying the order. There is no ambiguity that could incapacitate the applicant from making his representation. Most importantly, the grounds revealed that the applicant at one time was involved in the activity of trafficking in drugs.

B

The decision of the court

As seen from the argument above, central to this case is the issue whether the omission of the phrase 'atau sedang ada' from the ground accompanying the order has the effect of invalidating the same. Apparently, the form ABD 1B is standard format that is used for detention under s 6(1) of the Act. Close reading of the first paragraph of the body of the order will show the format in question is used to cover two situations that empower the minister or deputy minister to place a detainee under detention pursuant to s 6(1) of the Act. The first situation is where the detainee had in the past involved himself with drugs trafficking activity whilst the second covers the detainee's current such activity.

C

D

Most important of all is the statement of ground that forms the basis of the detention. To enable the detainee to make his representation effectively, it is important that he be made known of the exact reason for his detention. In the instant case, the ground on which the applicant's detention is based reads:

E

Bahawa kamu *pernah ada* kaitan dengan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya. (Emphasis added.)

F

Reading the above passage, it is extremely clear that the detention of the applicant is made by reason of his previous drug trafficking activity and not current. The narrowing down of the reasons from two to one by omitting the phrase 'atau sedang ada' has in fact made it much easier for the detainee to prepare his case for the purpose of representation. The omission of the phrase 'atau sedang ada' has not in any way prejudiced the applicant in preparing his case but on the contrary. Over indulgence in trivial technicality may lead to absurdity.

G

On the above premises, I can see no plausible reason for the court to set aside the order in question. In the circumstances, the applicant's notice of motion is dismissed.

H

Application dismissed.